

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
A SHORELINES SUBSTANTIAL
DEVELOPMENT PERMIT AND
A VARIANCE PERMIT DENIED BY
THE CITY OF OLYMPIA
TO SATO CORPORATION,

SATO CORPORATION,

Appellant,

v.

CITY OF OLYMPIA, and
STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondents.

SHB No. 81-41

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the request for review of the denials of applications for a shoreline substantial development permit and variance permit, came before the Shorelines Hearings Board, David Akana (presiding), Gayle Rothrock, Nat Washington, Rodney Kerslake and John Griffiths, at a hearing on April 12, 13 and 15, 1982, in Lacey.

Appellant was represented by its attorney, William D. Rives;

respondent City of Olympia was represented by Mark O. Erickson, city attorney; respondent Department of Ecology was represented by Wick Dufford, Assistant Attorney General. Court reporters Kim Otis and Betty Koharski recorded the proceedings.

On motion of H. Christopher Wickham, attorney, the South Capitol Neighborhood Association, Westside Neighborhood Association, and Northeast Thurston Action Association were granted leave to file an Amici Curiae brief.

Having heard the testimony, having examined the exhibits, and having considered the contentions of the parties, the Board makes these

FINDINGS OF FACT

I

Appellant Sato Corporation and the land owner, Stormans, applied for a shoreline substantial development permit to construct a six story, seventy foot high building for offices, shops and a restaurant in downtown Olympia.

II

The proposed building would be located on a site adjacent to the Dechutes waterway at 4th Avenue West and Simmons Street. Presently situated on the site and proposed for demolition are a vacant 3,212 square foot (SF) drive-in restaurant, a 21,411 SF grocery and drug store and some paved parking spaces.

The site originally was filled and leveled. It presents subsurface conditions which require more expensive foundation support for structures than would ordinarily be necessary.

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The westerly 20 to 30 feet of the site drops approximately 12 feet to the Deschutes Waterway. The shoreline is stabilized by rocks.

III

The site is located within an automobile-oriented commercial area. It is surrounded by the Deschutes Waterway on the west, the Olympia Yacht Club on the north, and mixed commercial and parking areas on the east and south.

IV

The proposed development would be constructed on about 2 acres of land. The proposed building would be located in the northeast corner of the lot. The building would cover only 17 percent of the site. One hundred twenty two parking spaces would be provided for building occupant purposes along 4th Avenue West and between the proposed building and the shoreline. A 15,000 SF public recreational area, designed by the City's Planning Department and acquiesced to by appellant, would be provided along the shoreline.

The proposed building would contain about 87,000 SF of commercial floor space which appellant believes is financially necessary for this project. It is proposed that the first floor be reserved for water oriented commercial and restaurant uses. The other five floors would be leased for office space. The exterior of the building would consist of light gold, Vari-Tran glass panels having a reflective factor of 28 percent.

V

At the time when the application was received by the City, the site was in the central retail (CR) zoning district of the City. In such district, office buildings of up to 8 stories or 100 feet, whichever was the lesser, were permitted. The ordinance permitted 100 percent lot coverage and exempts the district from the zoning parking requirements.

Although the proposed development was consistent with the provisions of the zoning code without parking, the City Planning Department and appellant ascertained that parking on the site was needed.

VI

To minimize the impacts of crowding the street and of view blockage from the street to the shoreline, the City Planning Department and appellant considered placing the building at various locations on the site. Such impacts were minimized by situating the building on the northeast corner of the site. As a result, about 40 of the 122 parking spaces were located between the building and the shoreline to the east.

Locating the proposed building at other places on the site could avoid the placement of parking spaces between the building and the shoreline but would have a greater visual impact from the street. The elimination of parking between the building and the shoreline would not preclude the use of the site as proposed.

VII

The location of the six story building on the site, as proposed, would minimize view blockage and crowding from a perspective on the street. It would have its maximum visual impact on southern upland viewpoints located on or near the state capitol campus. The visual effect upon northern shoreline vistas would be adverse. Water area views of Budd Inlet would be impaired; the building on the relatively narrow isthmus separating Budd Inlet from Capitol Lake would be out of scale. The view impairment would be added to that inherent in the adjacent nine story, pre-SMA¹ Capitol Center Building. While the existing view loss associated with the Capitol Center Building may be seen as precedent for high rise structures on the narrow isthmus, it also serves as an example of adverse visual effects which should be limited.

VIII

The Regional Urban Design Assistance Team (RUDAT) Study for Olympia was adopted as a part of the city's comprehensive plan. The interpretation of the intended uses and structures at the site by knowledgeable witnesses of the study are at variance with each other. The city staff report considered a smaller structure constructed of natural materials and containing more water-oriented uses, less surface parking and a larger public landscaped area to be more

1. "SMA" refers to the Shoreline Management Act of 1971.

1 compatible with the RUDAT recommendations. Such an alternative was
2 not acceptable to appellant, however.

3 IX

4 After the RUDAT study was adopted as a part of the city's
5 comprehensive plan, but subsequent to the filing of the instant permit
6 application, the city amended its zoning ordinance. The relevant
7 zoning provisions would now allow a maximum site coverage of forty
8 percent for buildings over thirty-five feet and up to sixty-five feet
9 in height. However, buildings exceeding thirty-five feet in height
10 must meet further criteria relating to the intent of the Central
11 Waterfront District, to enhancement of view or public access to open
12 spaces, to offset any upland view loss, and to limit maximum heights
13 to sixty-five feet.

14 X

15 The City's Shoreline Master Program (SMP) has been approved by the
16 Department of Ecology. WAC 173-19-4203.

17 XI

18 Policy No. 1 (page 10) of the SMP provides:

19 Public access to shorelines shall be permitted only
20 in a manner which preserves or enhances the
21 characteristics of the shoreline which existed prior
22 to the establishment of public access.

23 As a general proposition, public access is encouraged under the SMA.
24 This proposition has its limits, however. Where public access is
25 detrimental to the characteristics of the shoreline environment, such
26 access may be limited or deleted in order to preserve the status quo.

1 The provision for public access in the instant development is not
2 inconsistent with this policy. The present condition of the site
3 itself would be enhanced rather than be degraded as a result of the
4 proposed development. The quality of public access would be improved
5 over the existing parking lot now available to grocery shoppers.

6 XII

7 Policy No. 7 (page 11) of the SMP provides:

8 Shorelines of this Region which are notable for their
9 aesthetic, scenic, historic or ecological qualities
10 should be preserved. Any private or public
11 development which would degrade such shoreline
12 qualities shall be discouraged. Inappropriate
13 shoreline uses and poor quality shoreline conditions
14 should be eliminated.

15 Except for, perhaps, visual access to the water over the site from
16 the state capitol campus, the site itself is not notable for any
17 aesthetic, scenic, historic or ecological qualities. It follows that
18 the proposed development would not degrade such qualities on this
19 obviously non-natural shoreline.

20 The SMP designates the site in an urban environment. Under such
21 designation, commercial development is allowed when in conformance
22 with the zoning and permitted uses (page 64, SMP infra). The present
23 use of the site does not appear to conform with uses now allowed under
24 the SMP. The proposed use would be a more appropriate use of an urban
25 shoreline area. The quality of the existing shoreline condition would
26 be markedly improved if the substantial development and its public
27 access were provided.

XIII

Policy No. 3 (page 20) of the SMP for commercial development provides:

Commercial development should be aesthetically compatible with the areas in which they are to be placed. Visual access to the water shall be considered in the location of structures.

The proposed six story, reflective glass exterior building is not aesthetically compatible with the structures and shoreline environment in the surrounding area. Most striking is the generous use of glazing. The effect of using the material would be to introduce a notable incongruity among the existing structures along the isthmus. Also striking and related to the foregoing, is the relative scale of the proposed building. It would tower above the surrounding structures in height and in bulk, save only for the Capitol Center Building, and further impair visual access to Budd Inlet from viewpoints on the state capitol campus. From an aesthetic perspective, the proposed building would add a shiny, modern-day, oversized cube on a shoreline, which is dissimilar to characteristics, both present and intended. The proposed development is inconsistent with the policy that commercial development "should" be aesthetically compatible. The impact of visual access to the water was "considered" by the city when it made its determination relating to aesthetics. We cannot say that this determination was wrong. We can say that the foregoing policy is not, by its terms, mandatory.

XIV

Commercial Development Policies 2(a), (b) and (c) (page 64) allow the following uses:

(a) Water-dependent uses including marinas, marine fueling facilities, and ferry and boat terminals.

(b) Water-oriented uses including seafood stores, boating/fishing supplies, import shops, eating/drinking establishments with water access, waterfront parks and recreation areas, and boatels.

(c) Uses allowing substantial numbers of people to enjoy the shoreline including motels, hotels, restaurants, offices and apartments above first floor, and other uses designed for maximum public usage by permitting pedestrian waterfront use.

The proposed development contains elements of permitted uses: waterfront parks and recreation areas and uses allowing substantial numbers of people to enjoy the shoreline, e.g., restaurants, offices above the first floor, and pedestrian waterfront use. The description of the proposed development demonstrates consistency with the above policies.

XV

Commercial Development Policy 3(b) (page 65) provides:

Parking areas serving individual buildings or facilities are permitted as follows:

- * No parking between the building and the water (or in waterfront setback area)
- * No parking in side yards
- * Parking permitted upland from the building and under the buildings.

1 The proposed parking spaces between the buildings and the water are
2 inconsistent with the foregoing policy relating to commercial
3 development. If intended for recreational use, however, parking lots
4 with spaces for 10 or more cars must not be located within 40 feet of
5 the ordinary high water mark. (Page 69, SMP.)

6 XVI

7 The SMP provides for variances from the regulations (Section VII.
8 9, pages 85, 86), if it is determined:

9 (1) That special conditions and circumstances exist
10 which are peculiar to the land, such as size, shape,
11 topography or location and that literal
12 interpretation of the provisions of this Program
13 would deprive the property owner of rights commonly
14 enjoyed by other properties under the same
15 environmental designation.

16 (2) That special conditions and circumstances result
17 from the requirements of the Master Program and not
18 from the actions of the applicant.

19 (3) That the reasons set forth in the application
20 justify the granting of the variance, and that the
21 variance is the minimum variance that will make
22 possible the reasonable use of the land.

23 (4) That the variance will be in harmony with the
24 general purposes, goals and intent of the Master
25 Program, and the Shoreline Management Act.

26 The Department of Ecology rules, WAC 173-14-150, are similar in
27 effect.²

28 2. See Appendix A

1 Appellant did not show that there exists any special conditions
2 and circumstances peculiar to the land that would deprive it of rights
3 commonly enjoyed by other urban properties. The need for the variance
4 arises from locating the proposed building on the northeast corner of
5 the property and from providing for parking spaces which are not
6 required by the SMP or zoning ordinance. Strictly speaking, this need
7 does not arise from conditions peculiar to the land, but from
8 voluntary requirements related to the particular project proposal.
9 Parking is not a requirement of the city, and the additional 40
10 parking spaces desired would exceed the minimum necessary to provide a
11 reasonable use of the land. Additionally, there was no showing that
12 parking could not be provided in an appropriate structure farther away
13 from the shoreline rather than by the proposed paved parking lot.

14 XVII

15 Any Conclusion of Law which should be deemed a Finding of Fact is
16 hereby adopted as such.

17 From these Findings the Board enters these

18 CONCLUSIONS OF LAW

19 I

20 The Board's function in this matter is to determine whether the
21 proposed substantial development is consistent with the approved
22 shoreline master program and the provisions of the Shorelines
23 Management Act. RCW 90.58.140(2)(b). The specific issues submitted
24 have been identified in the prehearing order entered on February 11,
25 1982.

26 FINAL FINDINGS OF FACT,
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II

In a review of the denial of an application for a permit, the person requesting the review has the burden of proof. RCW 90.58.140(7).

III

The proposed development is consistent with Policy No. 1 (page 10), Policy No. 7 (page 11), and Commercial Development Policy 2 (page 64) of the SMP for reasons stated in the Findings.

IV

The proposed development is inconsistent with Commercial Development Policy 3(b) (page 65) as related in the Findings. Appellant has not shown that the criteria for granting a variance from the foregoing provision has been met. Specifically, Section VII.9. (1 and 3) of the SMP and WAC 173-14-150 2 (a, b and d) have not been demonstrated. If parking was to be open to also serve a recreational use, however, it appears that no variance would be required. But that is not the proposal submitted for determination as we understand it.

V

The proposed development is inconsistent with the non-mandatory Policy No. 3 (page 20) for commercial development for reasons stated in the Findings. Inconsistency with a non-mandatory policy is not alone dispositive of the proposal, as submitted, however.

VI

The policy stated in RCW 90.58.020:

1 contemplates protecting against adverse effects to
2 the public health, the land and its vegetation and
3 wildlife, and the waters of the state and their
4 aquatic life, while protecting generally public
5 rights of navigation and corollary rights incidental
6 thereto.

7 The means by which this policy is put into effect is providing for the
8 management of shorelines by planning for and fostering all reasonable
9 and appropriate uses. RCW 90.58.020. In such management scheme, "the
10 public's opportunity to enjoy the physical and aesthetic qualities of
11 natural shorelines shall be preserved to the greatest extent
12 feasible...." (Emphasis added.) While the instant shoreline is not a
13 "natural," i.e., unintruded, shoreline, alterations of even the
14 natural condition of the shorelines are allowed in limited instances
15 for certain priority uses including, shoreline recreational uses (e.g.
16 parks and other improvements facilitating public access to the
17 shorelines) and other development that will provide an opportunity for
18 substantial numbers of people to enjoy the shorelines. An office
19 building is not such an inherent "priority" or "preferred" use within
20 the contemplation of RCW 90.58.020. But the instant shoreline is not
21 "natural" either. Consequently, the local planning as evidenced in
22 the SMP is a particularly important factor for this project.

23 Finally, whether a particular shoreline is natural or not, all
24 developments must comply with a certain statutory standard:

25 Permitted uses in the shorelines of the state shall
26 be designed and conducted in a manner to minimize,
27 insofar as practical, any resultant damage to the
ecology and environment of the shoreline area and any
interference with the public's use of the water.

RCW 90.58.020. The proposed office and restaurant building is a permitted use in the urban environment (SMP, page 64) as is the recreational use (SMP, page 69). However, it is not designed in a manner to minimize any resultant damage to the environment of the shoreline area. The aesthetic impact of the proposed six story building on the narrow isthmus between downtown and west Olympia simply cannot be avoided by changing the exterior appearance from glass to, say, olive drab. The shoreline view would still be impaired. See Finding of Fact XIII. A more appropriate structure would be lower in height, but that is not what is being proposed. We must therefore conclude that the proposed substantial development is inconsistent with the foregoing portion of RCW 90.58.020. The cumulative effect of allowing this and similar proposals on the isthmus would irreversibly damage the aesthetic views remaining.³

3. There appears some need for the city to further refine its land use regulations on the isthmus to address height limitations from an aesthetic perspective.

VII

The proposed substantial development as disapproved by the City Commissioners has not been shown to be consistent with the Olympia Shoreline Master Program and the provisions of RCW 90.58.020. Therefore, the decision of the city should be affirmed.

VIII

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters this

ORDER

The denials of a substantial development permit and a variance permit by the City of Olympia are affirmed.

DONE this 17th day of June, 1982.

SHORELINES HEARINGS BOARD

David Akana
DAVID AKANA, Lawyer Member

Nat W. Washington
NAT W. WASHINGTON, Chairman

Gayle Rothrock
GAYLE ROTHROCK, Vice Chairman

Rodney M. Kerslake
RODNEY M. KERSLAKE, Member

John Griffiths
JOHN GRIFFITHS, Member

APPENDIX A

WAC 173-14-150 provides in part:

The purpose of a variance permit is strictly limited to granting relief to specific bulk, dimensional or performance standards set forth in the applicable master program where there are extraordinary or unique circumstances relating to the property such that the strict implementation of the master program would impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020.

(1) Variance permits should be granted in a circumstance where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances extraordinary circumstances should be shown and the public interest shall suffer no substantial detrimental effect.

(2) Variance permits for development that will be located landward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030(2)(b), except within those areas designated by the department as marshes, bogs, or swamps pursuant to chapter 173-22 WAC, may be authorized provided the applicant can demonstrate all of the following:

(a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes or significantly interferes with a reasonable use of the property not otherwise prohibited by the master program.

(b) That the hardship described in WAC 173-14-150(2)(a) above is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions.

(c) That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment designation.

(d) That the variance authorized does not constitute a grant or special privilege not enjoyed by the other properties in the area, and will be the minimum necessary to afford relief.

1
2

3 (4) In all granting of all variance permits,
4 consideration shall be given to the cumulative impact
5 of additional requests for like actions in the area.
6 For example if variances were granted to other
7 developments in the area where similar circumstances
8 exist the total of the variances should also remain
9 consistent with the policies of RCW 90.58.020 and
10 should not produce substantial adverse effects to the
11 shoreline environment.
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